

ORIGINAL

FEDERAL MARITIME COMMISSION

46 CFR parts 550, 551, 555, 560, 565, 585, 586, 587, and 588

Docket No. 98-25

AMENDMENTS TO REGULATIONS GOVERNING RESTRICTIVE FOREIGN SHIPPING PRACTICES, AND NEW REGULATIONS GOVERNING CONTROLLED CARRIERS

AGENCY: Federal Maritime Commission

ACTION: Notice of Proposed Rulemaking

SUMMARY: The Federal Maritime Commission proposes to revise and redesignate its regulations relating to section 19 of the Merchant Marine Act, 1920, section 13(b)(5) of the Shipping Act of 1984, and the Foreign Shipping Practices Act of 1988, and add new regulations relating to section 9 of the Shipping Act of 1984, in order to incorporate certain amendments made by the Ocean Shipping Reform Act of 1998 as well as to clarify and reorganize existing regulations.

DATES: Submit comments on or before [INSERT DATE THIRTY (30)
DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Address all comments concerning this proposed rule to:

Joseph C. Polking
Secretary
Federal Maritime Commission
800 North Capitol Street N.W., Room 1046
Washington, D.C. 20573-0001

FOR FURTHER INFORMATION CONTACT:

Thomas Panebianco
General Counsel
Federal Maritime Commission
800 North Capitol Street N.W.

Washington, D.C. 20573-0001
(202) 523-5740

SUPPLEMENTARY INFORMATION:

The Ocean Shipping Reform Act of 1998, Public Law 105-258, 112 Stat. 1902, ("OSRA") amends the Shipping Act of 1984 ("1984 Act"), the Merchant Marine Act, 1920 ("1920 Act"), and the Foreign Shipping Practices Act of 1988 ("FSPA") in several areas. The Commission's rules at former 46 CFR parts 585, 586, 587, and 588 effectuate the statutory obligations mandated by the 1984 Act, the 1920 Act, and the FSPA. The Commission now proposes to update, redesignate, and clarify these rules to reflect the changes made by OSRA. In addition, the Commission proposes a new regulation, 46 CFR part 565, which would implement changes made by OSRA to section 9 of the 1984 Act and would gather previously scattered regulations affecting controlled carriers into a more readily accessible codification.

Clarification and amendment of former 46 CFR part 585

The proposed rule would amend the Commission's regulations covering the provisions of section 19 of the 1920 Act, to incorporate the changes made by OSRA. The entire part is redesignated as part 550.

Changes to redesignated § 550.102 and § 550.301 reflect OSRA's clarification that "pricing practices" are among the practices that could give rise to a condition unfavorable to shipping. The

changes to the authority citation and to redesignated § 550.103(a) reflect the addition of OSRA as an amendment to the 1920 Act. The changes to redesignated §§ 550.103(b), 550.201, 550.202(b), and 550.301(d) reflect OSRA's use of the new term "ocean transportation intermediary" in place of the old terms "ocean freight forwarder" and "non-vessel-operating common carrier".

The amendments instituted by OSRA include the addition of the suspension of service contracts to the list of available remedies in redesignated §§ 550.505(a), 550.601(c), and 550.602. The Commission's proposed rule reflects this change.

Redesignation of former 46 CFR part 586 and removal of § 586.3

The proposed rule would redesignate former 46 CFR part 586 as part 551, ACTIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE U.S. FOREIGN TRADE. Former 46 CFR § 586.3, Conditions unfavorable to shipping in the United States/Ecuador trade, is no longer an ongoing proceeding and is therefore removed.

Clarification and amendment of former 46 CFR part 587

The proposed rule would amend the Commission's regulations covering the 1984 Act's provisions providing relief for U.S.-flag vessels unduly impaired from accessing the ocean trade between foreign ports. See section 13(b)(5) of the 1984 Act, 46 U.S.C. app. § 1712(b)(5) (renumbered by OSRA as section 13(b)(6)). The

entire part is redesignated as part 560.

Changes to redesignated §§ 560.1(a)(1) and (2) and 560.5(a) are changes to reflect renumbering of the Act. Section 560.2(c) refers to "fighting ships," a term which has been deleted from the definitions section of the Act and elsewhere. The removal of this term effects that deletion. The changes to redesignated § 560.7(b)(3)(i) reflect OSRA's addition of the suspension of service contracts as a section 11a(e) (1) (B) remedy.

Clarification and amendment of former 46 CFR part 588

The proposed rule would amend the Commission's regulations covering the FSPA's provisions authorizing Commission action to address adverse conditions affecting U.S. -flag carriers that do not exist for foreign carriers in the United States. The entire part is redesignated as part 555.

The change to redesignated § 555.1 makes reference to OSRA as an amendment to the FSPA. Changes to redesignated §§ 555.2(a) and (d), and § 555.4 reflect OSRA's use of the new term "ocean transportation intermediary" in place of the old terms "ocean freight forwarder" and "non-vessel-operating common carrier". The change to redesignated § 555.2(c) corrects an error of word choice and corresponds to the language employed in the FSPA.

The change to redesignated § 555.4(c) improves the clarity of the provision. The changes to redesignated § 555.8 reflect OSRA's

addition of the suspension of service contracts as a remedy.

New 46 CFR part 565

The proposed new rule would implement OSRA's revision of section 9 of the 1984 Act, and would provide procedures for reviewing controlled carrier rates, charges, classifications, rules and regulations. The proposed rule improves the clarity of regulations governing controlled carriers, and gathers into a single part regulations which were previously scattered among the tariff and service contract regulations in former 46 CFR § 514.

In addition to the 1984 Act's prohibitions against "maintaining" rates or charges below a level that is just and reasonable, OSRA adds the prohibition against "charging or assessing" such rates. Similarly, OSRA adds the prohibition on "enforcing" unjust or unreasonable rates, charges, classifications, rules or regulations in addition to "establishing and maintaining" them.

The change of tariff filing to tariff publication under OSRA is also reflected in section 9(a) of the 1984 Act as it applies to controlled carriers. Hence, in place of "filing," the Commission is authorized to prohibit the "publication or use" of any rates, charges, classifications, rules or regulations that a controlled carrier has failed to show are just and reasonable.

In a further reflection of the new tariff system, OSRA changes

the authority of the Commission from "disapproving" the "filing" to "prohibiting and suspending" the "publication and use" of unjust and unreasonable rates, charges, classifications, rules or regulations. Likewise, the Commission is directed by OSRA to take into account whether the rates or charges which have been "published or assessed" are below a compensatory level.

OSRA imposes a new time limit on the Commission's decision on whether or not a rate, charge, classification, rule or regulation is unjust or unreasonable. The Commission must decide such matters within 120 days of the receipt of information. This is reflected in proposed 46 CFR § 565.8.

Finally, a significant change was made by OSRA to the regulation of controlled carriers in the exceptions found in section 9(f) of the 1984 Act. Three of the five exceptions were removed by OSRA; the provisions of section 9 now apply to all controlled carriers except those that are: (1) of a state whose vessels are entitled by a treaty of the United States to receive national treatment or Most Favored Nation treatment; or (2) in a trade served exclusively by controlled carriers. Proposed regulation § 565.5 reflects those changes. In addition to requiring ocean common carriers to inform the Commission of any changes to their control which might affect their controlled carrier classification, § 565.4 also requires newly commencing controlled common carrier operations to notify the Commission of

the details of their ownership or control.

This document also outlines the proposed restructuring of subchapter C of chapter IV, 46 CFR, by revising the subchapter heading and adding redesignated parts 550, 555, and 560 and new part 565 to subchapter C. Current provisions of part 514 which are proposed here to be incorporated into new part 565 will be removed from part 514 in a subsequent document.

In accordance with 44 U.S.C. 3518(c)(1)(B), and except for investigations undertaken with reference to a category of individuals or entities (e.g., an entire industry), any information requests or requirements in 46 CFR parts 585, 586, 587 and 588 are not subject to the requirements of section 3507 of the Paperwork Reduction Act because such collections of information are pursuant to a civil, administrative action or investigation by an agency of the United States against specific individuals or entities.

The reporting requirements contained in 46 CFR 565 have been submitted to the Office of Management and Budget (OMB). The Commission estimates that the public burden for this collection of information is estimated to be 70 annual personhours for all of the estimated 10 annual respondents. This estimate includes, as applicable, the time needed to review instructions, develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and

providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information, search existing data sources, gathering and maintain the data needed, and complete and review the collection of information; and transmit or otherwise disclose the information.

Send comments regarding the burden estimate to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention Desk Officer for the Federal Maritime Commission, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503 within 30 days of publication in the Federal Register.

The FMC would also like to solicit comments to: (a) evaluate the accuracy of the Commission's burden estimates for the proposed collection of information; (b) enhance the quality, utility, and clarity of the information to be collected; and (c) minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this proposed rulemaking will be summarized and/or included in the final rule and will become a matter of public record. The OMB control number will be displayed in the final rule.

The Chairman certifies, pursuant to section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, that the proposed amendments will not, if promulgated, have a significant impact on

a substantial number of small entities. The proposed changes affect vessel-operating common carriers, entities that are not considered to be small.

List of subjects

46 CFR part 585 and 550

Administrative practice and procedure, Maritime carriers.

46 CFR part 586 and 551

Japan, Maritime carriers.

46 CFR part 587 and 560

Administrative practice and procedure, Maritime carriers.

46 CFR part 588 and 555

Administrative practice and procedure, Investigations, Maritime carriers.

46 CFR part 565

Administrative practice and procedure, Maritime carriers, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Commission proposes to amend 46 CFR parts 585, 586, 587, and 588, and to add new part 565, as set forth below:

1. Revise the title of subchapter C to read:

SUBCHAPTER C - - REGULATIONS AND ACTIONS TO ADDRESS RESTRICTIVE

FOREIGN MARITIME PRACTICES

PART 585 - - REGULATIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE
TO SHIPPING IN THE FOREIGN TRADE OF THE UNITED STATES

1. Redesignate part 585 as part 550, add revised part 550 to Subchapter C, and revise all internal references.

2. The authority citation for redesignated part 550 is revised to read as set forth below:

Authority: 5 U.S.C. 553; sec. 19(a)(2), (e),(f),(g),(h),(i),(j),(k) and (l) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(a)(2), (e),(f),(g),(h),(i),(j),(k) and (l), as amended by Pub. L. No. 105-258; Reorganization Plan No. 7 of 1961, 75 Stat 840; and sec. 10002 of the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a.

Note: In accordance with 44 U.S.C. 3518(c)(1)(B), and except for investigations undertaken with reference to a category of individuals or entities (e.g., an entire industry), any information requests or requirements in 46 CFR part 550 are not subject to the requirements of section 3507 of the Paperwork Reduction Act because such collections of information are pursuant to a civil, administrative action or investigation by an agency of the United States against specific individuals or entities.

3. Revise redesignated section 550.102 to read as set forth below:

§ 550.102 Scope.

Regulatory actions may be taken when the Commission finds, on its own motion or upon petition, that a foreign government has promulgated and enforced or intends to enforce laws, decrees, regulations or the like, or has engaged in or intends to engage in practices which presently have or prospectively could create conditions unfavorable to shipping in the foreign trade of the United States, or when owners, operators, agents or masters of foreign vessels engage in or intend to engage in competitive methods, pricing practices or other practices which have created or could create such conditions.

4. Revise redesignated section 550.103(a) and (b) to read as set forth below:

§ 550.103 Definitions

* * * * *

(a) Act means the Merchant Marine Act, 1920, as amended by Pub. L. No. 101-595 and as amended by Pub. L. No. 105-258.

(b) Person means individuals, corporations, partnerships and associations existing under or authorized by the laws of the United States or of a foreign country, and includes any common carrier, tramp operator, bulk operator, shipper, shippers' association, importer, exporter, consignee, ocean transportation intermediary, marine terminal operator, or any component of the Government of the

United States.

* * * * *

5. Revise redesignated section 550.201(a) to read as set forth below:

§ 550.201 Information orders.

* * * * *

(a) The Commission may, by order, require any person (including any common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean transportation intermediary, or marine terminal operator, or any officer, receiver, trustee, lessee, agent, or employee thereof), to file with the Commission a report, answers to questions, documentary material, or other information which the Commission considers necessary or appropriate;

* * * * *

6. Revise redesignated section 550.202(b) to read as set forth below:

§ 550.202 Type of Information

* * * * *

(b) Shipper, shippers' association, or ocean transportation intermediary in the affected trade to furnish any or all of the following information:

(1) * * *

(2) * * *

(3) Amount of brokerage, ocean transportation intermediary compensation or other charges collected or paid in connection with shipments in the affected trade; and

* * * * *

7. Revise the introductory portion and paragraph (d) of redesignated section 550.301 to read as set forth below:

§ 550.301 Findinas.

For the purposes of this part, conditions created by foreign governmental action or competitive methods, pricing practices or other practices of owners, operators, agents or masters of foreign vessels are found unfavorable to shipping in the foreign trade of the United States, if such conditions:

* * * * *

(d) Restrict or burden a carrier's intermodal movements or shore-based maritime activities, including terminal operations and cargo solicitation; agency services; ocean transportation intermediary services and operations; or other activities and services integral to transportation systems; or

* * * * *

8. Revise redesignated section 550.601(c) to read as set forth below:

§ 550.601 Actions to correct unfavorable conditions.

* * * * *

(c) Suspend, in whole or in part, tariffs and service contracts for carriage to or from United States ports, including a common carrier's right to use tariffs of conferences and service contracts of agreements in United States trades of which it is a member for any period the Commission specifies;

* * * * *

9. Revise redesignated section 550.602 to read as set forth below:

§ 550.602 Penalty.

A common carrier that accepts or handles cargo for carriage under a tariff or service contract that has been suspended under § 550.505 or § 550.601 of this part, or after its right to use another tariff or service contract has been suspended under those sections, is subject to a civil penalty of not more than \$50,000 for each day that it is found to be operating under a suspended tariff or service contract.

PART 586 - ACTIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE
TO SHIPPING IN THE U.S. FOREIGN TRADE

1. Redesignate part 586 as part 551, add revised part 551 to

Subchapter C, and revise all internal references.

2. The authority citation for redesignated part 586 is revised to read as set forth below:

Authority: 46 U.S.C. app. 876(1)(b); 46 U.S.C. app. 876(5) through (12); 46 CFR part 550; Reorganization Plan No. 7 of 1961, 26 FR 7315 (August 12, 1961).

Note: In accordance with 44 U.S.C. 3518(c)(1)(B), and except for investigations undertaken with reference to a category of individuals or entities (e.g., an entire industry), any information requests or requirements in 46 CFR part 551 are not subject to the requirements of section 3507 of the Paperwork Reduction Act because such collections of information are pursuant to a civil, administrative action or investigation by an agency of the United States against specific individuals or entities.

3. Redesignated section 551.3 is removed.

PART 587 - ACTIONS TO ADDRESS CONDITIONS UNDULY IMPAIRING
ACCESS OF U.S. -FLAG VESSELS TO OCEAN TRADE BETWEEN FOREIGN PORTS

1. Redesignate part 587 as part 560, add revised part 560 to Subchapter C, and revise all internal references.

2. The authority citation for redesignated part 560 is revised to read as set forth below:

Authority: 5 U.S.C. 553; secs. 13(b)(6), 15 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1712(b)(6), 1714, and 1716, as amended by Pub. L. No. 105-258; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a), as amended by Pub. L. No. 105-258.

* * * * *

3. Revise redesignated section 560.1(a) to read as set forth below:

§ 560.1 Purpose; general provisions.

(a)(1) It is the purpose of this part to enumerate certain conditions resulting from the action of a common carrier, acting alone or in concert with any person, or a foreign government, which unduly impair the access of a vessel documented under the laws of the United States whether liner, bulk, tramp or other vessel, (hereinafter "U.S. flag vessel") to ocean trade between foreign ports, which includes intermodal movements, and to establish procedures by which the owner or operator of a U.S. flag vessel (hereinafter "U.S. flag carrier") may petition the Federal Maritime Commission for relief under the authority of section 13(b)(6) of the Shipping Act of 1984 ("the Act") (46 U.S.C. app. 1712(b)(6)).

(2) It is the further purpose of this part to indicate the general circumstances under which the authority granted to the

Commission under section 13(b)(6) may be invoked, and the nature of the subsequent actions contemplated by the Commission.

(3) This part also furthers the goals of the Act with respect to encouraging the development of an economically sound and efficient U.S. flag liner fleet as stated in section 2 of the Act (46 U.S.C. app. 1701).

* * * * *

4. Revise redesignated section 560.2(c) to read as set forth below:

§ 560.2 Factors indicating conditions unduly impairing access.

* * * * *

(c) Use of predatory practices, possibly including but not limited to below market pricing designed to exclude competition, and use of closed conferences employing deferred rebates, which unduly impair access of a U.S. flag vessel to the trade.

* * * * *

5. Revise the first sentence of the introductory text of redesignated section 560.5(a) to read as set forth below:

§ 560.5 Receipt of relevant information.

(a) In making its decision on matters arising under section 13(b)(6) of the Act, the Commission may receive and consider relevant information from any owner, operator, or conference in

an affected trade, or from any foreign government, either directly or through the Department of State or from any other reliable source. * * *

* * * * *

6. Revise redesignated section 560.7(b)(3)(i) to read as set forth below:

\$ 560.7 Decision; sanctions; effective date.

* * * * *

(b) * * *

(3)(i) Suspension, in whole or in part, of any or all tariffs or service contracts for carriage to or from United States ports for any period the Commission specifies, or until such time as unimpaired access is secured for U.S. flag carriers in the affected trade.

* * * * *

PART 588 -- ACTIONS TO ADDRESS ADVERSE CONDITIONS AFFECTING U.S. FLAG CARRIERS THAT DO NOT EXIST FOR FOREIGN CARRIERS IN THE UNITED STATES

1. Redesignate part 588 as part 555, add revised part 555 to Subchapter C, and revise all internal references.

2. The authority citation for redesignated part 555 is revised

to read as set forth below:

Authority: 5 U.S.C. 553; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a), as amended by Pub. L. No. 105-258.

Note: In accordance with 44 U.S.C. 3518(c)(1)(B), and except for investigations undertaken with reference to a category of individuals or entities (e.g., an entire industry), any information requests or requirements in 46 CFR part 555 are not subject to the requirements of section 3507 of the Paperwork Reduction Act because such collections of information are pursuant to a civil, administrative action or investigation by an agency of the United States against specific individuals or entities.

3. Revise redesignated section 555.1 to read as set forth below:

555.1 Purpose.

It is the purpose of the regulations of this part to establish procedures to implement the Foreign Shipping Practices Act of 1988, as amended by the Ocean Shipping Reform Act of 1998, which authorizes the Commission to take action against foreign carriers, whose practices or whose government's practices result in adverse conditions affecting the operations of United States carriers, which adverse conditions do not exist for those foreign carriers in the United States. The regulations of this part

provide procedures for investigating such practices and for obtaining information relevant to the investigations, and also afford notice of the types of actions included among those that the Commission is authorized to take.

4. Revise redesignated section 555.2(a), (c), and (d) to read as set forth below:

§ 555.2 Definitions.

* * * * *

(a) "Common carrier," "marine terminal operator," "ocean transportation intermediary," "ocean common carrier," "person," "shipper," "shippers' association," and "United States" have the meanings given each such term, respectively, in section 3 of the Shipping Act of 1984 (46 U.S.C. app. 1702);

* * * * *

(c) "Maritime services" means port-to-port carriage of cargo by the vessels operated by ocean common carriers;

(d) "Maritime-related services" means intermodal operations, terminal operations, cargo solicitation, agency services, ocean transportation intermediary services and operations, and all other activities and services integral to total transportation systems of ocean common carriers and their foreign domiciled affiliates on their own and others' behalf;

* * * * *

5. Revise redesignated section 555.4(a) and (c) to read as set forth below:

§ 555.4 Petitions.

(a) A petition for investigation to determine the existence of adverse conditions as described in 555.3 may be submitted by any person, including any common carrier, shipper, shippers' association, ocean transportation intermediary, or marine terminal operator, or any branch, department, agency, or other component of the Government of the United States. Petitions for relief under this part shall be in writing, and filed in the form of an original and fifteen copies with the Secretary, Federal Maritime Commission, Washington, DC 20573.

* * * * *

(c) A petition which the Commission determines fails to comply substantially with the requirements of paragraph (b) of this section shall be rejected promptly and the person filing the petition shall be notified of the reasons for such rejection. Rejection is without prejudice to the filing of an amended petition.

6. Revise redesignated section 555.8 (a)(2) to read as set forth below:

§ 555.8 Action against foreign carriers.

(a) * * *

(2) Suspension, in whole or in part, of any or all tariffs or service contracts, including the right of an ocean common carrier to use any or all tariffs or service contracts of conferences in United States trades of which it is a member for such period as the Commission specifies;

* * * * *

PART 565 -- CONTROLLED CARRIERS

1. Add part 565 to subchapter C to read as set forth below:

PART 565 - CONTROLLED CARRIERS

Sec.

- 565.1 Purpose and scope.
- 565.2 Definitions.
- 565.3 Classification as controlled carrier.
- 565.4 Notification to Commission of change in control.
- 565.5 Exceptions.
- 565.6 Level of rates and charges generally.
- 565.7 Effective dates.
- 565.8 Special permission.
- 565.9 Commission review, suspension and prohibition of rates, charges, classifications, rules or regulations.
- 565.10 Suspension procedures, period and replacement rates.
- 565.11 Presidential review.
- 565.12 Stay, postponement, discontinuance or suspension of action.

AUTHORITY: 46 U.S.C. App. 1708, as amended by Pub. L. No. 105-258.

§ 565.1 Purpose and Scope.

(a) Purpose. The regulations of this part are intended to carry out the Commission's mandate under section 9 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998, to monitor the practices of controlled carriers and ensure that they do not:

(1) maintain rates or charges in their tariffs and service contracts that are below a level that is just and reasonable; nor

(2) establish, maintain or enforce unjust or unreasonable classifications, rules or regulations in those tariffs or service contracts which result or are likely to result in the carriage or handling of cargo at rates or charges that are below a just and reasonable level.

(b) Scope. The regulations contained in this part set forth the special procedures whereby controlled carriers' tariffs and service contracts become effective and are reviewed by the Commission. These regulations in no way exempt controlled carriers from other Commission regulations or statutory authority to which they may otherwise be subject as ocean common carriers. These regulations apply to all controlled carriers operating in the foreign commerce of the United States unless excepted under section 9(f) of the Shipping Act of 1984, as reflected by § 565.5.

§ 565.2 Definitions.

(a) Controlled carrier means an ocean common carrier that is, or whose operating assets are, directly or indirectly owned or controlled by a government. Ownership or control by a government shall be deemed to exist with respect to any ocean common carrier if:

(1) a majority portion of the interest in the carrier is owned or controlled in any manner by that government, by any agency thereof, or by any public or private person controlled by that government; or

(2) that government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer or the chief executive officer of the carrier.

(b) Effective date has the same meaning it has in 46 CFR part 520.

§ 565.3 Classification as controlled carrier.

(a) Notification. The Commission will periodically review the ocean common carriers operating in the foreign commerce of the United States and will notify any ocean common carrier of any change in its classification as a controlled carrier.

(b) Rebuttal of classification. (1) Any ocean common carrier contesting such a classification may, within 30 days after the date of the Commission's notice, submit a rebuttal statement.

(2) The Commission shall review the rebuttal and notify the

ocean common carrier of its final decision.

§ 565.4 Notification to Commission of change in control.

Whenever the operation, control or ownership of an ocean common carrier is transferred resulting in a majority portion of the interest of that ocean common carrier being owned or controlled in any manner by a government, the ocean common carrier shall immediately send written notification of the details of the change to the Secretary of the Commission. If a carrier is newly commencing ocean common carrier operations in a United States trade, and if a majority portion of the carrier is owned or controlled by a government, or if a government may approve or disapprove the majority of directors or the chief executive or operating officer of the carrier, the carrier shall immediately send written notification to the Secretary of the details of such ownership or control.

§ 565.5 Exceptions.

All controlled carriers shall be subject to provisions of this part and section 9 of the Shipping Act of 1984 except those which meet the following exceptions:

(a) when the vessels of the controlling state are entitled by a treaty of the United States to receive national or most-favored-nation treatment; or

(b) when the controlled carrier operates in a trade served

exclusively by controlled carriers.

§ 565.6 Level of rates and charges generally.

(a) Level of rates and charges. No controlled carrier may maintain or enforce rates or charges in its tariffs or service contracts that are below a level that is just and reasonable. No controlled carrier may establish or maintain unjust or unreasonable classifications, rules, or regulations in its tariffs or service contracts. An unjust or unreasonable classification, rule or regulation means one that results or is likely to result in the carriage or handling of cargo at rates or charges that are below a just and reasonable level. See § 565.9(a)(2) (Rate standards).

§ 565.7 Effective dates.

(a) Generally. Except for service contracts, the rates, charges, classifications, rules or regulations of controlled carriers may not, unless the Commission has granted special permission, **become** effective sooner than the 30th day after the date of publication.

(b) Owen rates. (1) Generally. Controlled carriers that are members of conference agreements publishing rates for commodities designated as open by the conference are subject to the 30-day controlled carrier notice requirement, except when special permission is granted by the Commission under § 565.8.

(2) Conference publication of reduced open rates.

Notwithstanding paragraph (b) (1) of this section, a conference may, on less than 30 days' notice, publish reduced rates on behalf of controlled carrier members for open-rated commodities:

(i) at or above the minimum level set by the conference; or

(ii) at or above the level set by a member of the conference that has not been determined by the Commission to be a controlled carrier subject to section 9 of the Shipping Act of 1984.

(c) Independent action rates of controlled carriers.

Conferences may publish on behalf of their controlled carrier members lower independent action rates on less than 30 days' notice, subject to the requirements of their basic agreements and subject to such rates being published at or above the level set by a member of the conference that has not been determined by the Commission to be a controlled carrier subject to section 9 of the Shipping Act of 1984.

§ 565.8 Special wermission.

Section 8(d) of the Shipping Act of 1984 authorizes the Commission, in its discretion and for good cause shown, to permit increases or decreases in rates, or the issuance of new or initial rates, on less than statutory notice under § 565.7.

Section 9(c) of the Shipping Act of 1984 authorizes the Commission to permit a controlled carrier's rates, charges,

classifications, rules or regulations to become effective on less than 30 days' notice. The Commission may also in its discretion and for good cause shown, permit departures from the requirements of this part. The Commission will consider such requests for special permission by controlled carriers pursuant to its procedures set forth at 46 CFR part 520.

§ 565.9 Commission review, suspension and prohibition of rates, charges, classifications, rules or regulations.

(a) (1) Request for justification. Within 20 days of a request (with respect to its existing or proposed rates, charges, classifications, rules or regulations) from the Commission, each controlled carrier shall file a statement of justification that sufficiently details the controlled carrier's need and purpose for such rates, charges, classifications, rules or regulations upon which the Commission may reasonably base its determination of the lawfulness thereof.

(2) Rate standards. (i) In determining whether rates, charges, classifications, rules or regulations by a controlled carrier are just and reasonable, the Commission shall take into account whether the rates or charges which have been published or assessed or which would result from the pertinent rates, charges, classifications, rules or regulations are below a level which is fully compensatory to the controlled carrier based upon that carrier's actual or constructive costs.

(ii) For the purposes of § 565.9 (a)(2)(i), "constructive costs" means the costs of another carrier, other than a controlled carrier, operating similar vessels and equipment in the same or a similar trade.

(iii) The Commission may also take into account other appropriate factors, including, but not limited to, whether:

(A) the rates, charges, classifications, rules or regulations are the same as or similar to those published or assessed by other carriers in the same trade;

(B) the rates, charges, classifications, rules or regulations are required to assure movement of particular cargo in the trade; or

(C) the rates, charges, classifications, rules or regulations are required to maintain acceptable continuity, level or quality of common carrier service to or from affected ports.

(3) Time for determination. The Commission shall determine within 120 days of the receipt of information requested by the Commission under this section, whether the rates, charges, classifications, rules or regulations of a controlled carrier may be unjust and unreasonable. Whenever the Commission is of the opinion that the rates, charges, classifications, rules or regulations published or assessed by a controlled carrier may be unjust and unreasonable, the Commission shall issue an order to

the controlled carrier to show cause why those rates, charges, classifications, rules or regulations should not be prohibited.

(b) Suspension. Pending a decision on whether to prohibit the rates, charges, classifications, rules or regulations of a controlled carrier, the Commission may suspend the rates, charges, classifications, rules or regulations. See § 565.10.

(c) Prohibition. The Commission shall prohibit the use of any rates, charges, classifications, rules or regulations that the controlled carrier has failed to demonstrate to be just and reasonable. In a proceeding under this paragraph, the burden of proof is on the controlled carrier to demonstrate that its rates, charges, classifications, rules or regulations are just and reasonable. The use of rates, charges, classifications, rules or regulations published or assessed by a controlled carrier that have been suspended or prohibited by the Commission is unlawful.

(d) Publication. All final orders of prohibition shall be published in the Federal Reaister.

§ 565.10 Suspension procedures and replacement rates.

(a) (1) Suspension prior to effective date. Pending a determination as to their lawfulness in a prohibition proceeding as described in § 565.9, the Commission may suspend the rates, charges, classifications, rules or regulations at any time before their effective date.

(2) Suspension after effective date. In the case of rates, charges, classifications, rules or regulations that have already become effective, the Commission may, upon the issuance of an order to show cause, suspend those rates, charges, classifications, rules or regulations on not less than 30 days' notice to the controlled carrier.

(b) Period of suspension. In any case, no period of suspension may be greater than 180 days.

(c) Implementation. (1) Upon issuance of an order suspending a rate, charge, classification, rule or regulation in whole or in part, the Commission shall direct the controlled carrier to remove the suspended material from its tariff publication; or

(2) if the matter subject to the suspension order is not covered by paragraph (c)(1) of this section, the Commission shall set forth procedures in the order for implementing the suspension.

(3) Publication. All orders of suspension shall be published in the Federal Register.

(d) Replacement rates. Controlled carriers may publish in tariffs or file in service contracts rates, charges, classifications, rules or regulations in lieu of the suspended matter ("replacement rates").

(1) Effective date. In the case of replacement rates which are published in tariffs and which are scheduled to become effective during a suspension period, may become effective immediately upon either their publication in tariffs or upon the effective date of the suspension, whichever is later.

(2) Rejection of replacement rates. The Commission may reject the replacement rates, charges, classifications, rules or regulations published in tariffs or filed in service contracts to take effect during the suspension period if they are unjust and unreasonable. In determining whether to reject replacement rates, charges, classifications, rules or regulations, the Commission will consider whether they would result in total charges (i.e, rate plus applicable surcharges) that are lower than the lowest comparable charges effective for a common carrier, other than a controlled carrier, serving the same trade.

(3) At the same time it announces replacement rates, the controlled carrier shall submit to the Secretary of the Commission, a letter identifying the specific competing common carrier's rates, charges, classification or rules resulting in total charges which are equal to or lower than its own.

§ 565.11 Presidential Review.


The Commission shall transmit all orders of suspension or final orders of prohibition to the President of the United States

concurrently with the submission of such orders to the Federal Reaister pursuant to § 565.9(d) or § 565.10(c)(3). The President may, within 10 days of either the receipt or effective date of the order, request in writing that the Commission stay the effect of the order for reasons of national defense or foreign policy.

§ 565.12 Stay, postponement, discontinuance or suspension of action.

The Commission may, on its own motion or upon petition, postpone, discontinue, or suspend any and all actions taken by it under the provisions of this part. The Commission shall immediately stay the effect of any order issued under this part as requested by the President pursuant to § 565.11.

By the Commission.


Joseph C. Polking
Secretary

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 6,400 feet upstream of U.S. Route 91.	None	*1,668

Maps are available for inspection at the Village of Lindsay Cii Hall, 115 Pine Street, Lindsay, Nebraska.

Send comments to The Honorable Kenneth Kurtenbach, Mayor, Village of Lindsay, P.O. Box 116, Lindsay, Nebraska 66644.

Washington	Brewster (city) Okanogan County.	Swamp Creek	Just upstream of Bridge Street	None	*786
			Approximately 2,550 feet above mouth, at the corporate limits.	Norm	*915

Maps are available for inspection at the Cii of Brewster Clerk/Treasurer's Office, 105 South Third Street, Brewster, Washington

Send comments to The Honorable Bonnie House, Mayor, Cii of Brewster, P.O. Box 340, Brewster, Washington 96619.

	North Bonneville (City) Skamania County.	Hamilton Creek	Just upstream of confluence with the Co- lumbia River.	None	96.0
			Approximately 100 feet upstream of Ever- green Drive.	None	47.0
		Columbia River	Approximately 1.6 miles upstream of con- fluence of Hamilton Creek.	None	*\$7.6
			Approximately 2 miles upstream of con- fluence with Hamilton Creek.	None	*38.9
		Greenleaf Creek	Just upstream of confluence with Hamil- ton Creek.	None	*47.0
			Approximately 550 feet upstream of Moffet Hot Springs Road.	None	*66.0

Maps are available for inspection at the City of North Bonneville Clerk/Treasurer's Office, Cascade Drive. North Bonneville, Washington.

Send comments to The Honorable John Kirk, Mayor, Cii of North Bonneville, P.O. Box 7, North Bonneville, Washington 96639.

	Washtucna (Town) Adams County.	Washtucna Coulee	Just upstream of confluence with Staley Coulee.	None	*1,024
			Approximately 850 feet upstream of con- fluence with Staley Coulee.	None	*1,024.5
		Staley Coulee	Approximately 2,700 feet downstream of Cooper Street.	None	*1,015.5
			Approximately 400 feet upstream of Main Street.	None	*1.08.0

Maps are available for inspection at the Town of Washtucna Clerk/Treasurer's Office, Southeast 165 Main Street, Washtucna, Washington.

Send comments to The Honorable Syd Sullivan, Mayor, Town of Washtucna, P.O. Box 713. Washtucna, Washington 99371.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: November 24, 1998.

Michael J. Armstrong,
Associate Director for Mitigation.

[FR Doc. 98-32297 Filed 12-3-98; 8:45 am]

BILLING CODE 6718-04-P

FEDERAL MARITIME COMMISSION

46 CFR Parts 550, 551, 555, 560, 565,
585, 586, 587, and 688

[Docket No. 98-25]

Amendments to Regulations Governing Restrictive Foreign Shipping Practices, and New Regulations Governing Controlled Carriers

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to revise and redesignate its regulations relating to section 19 of the Merchant Marine Act, 1920, section 13(b)(5) of the Shipping Act of 1964, and the Foreign Shipping Practices Act of 1966, and add new regulations relating to section 9 of the Shipping Act of 1964, in order to incorporate certain amendments made by the Ocean Shipping Reform Act of 1998 as well as to clarify and reorganize existing regulations.

DATES: Submit comments on or before January 4, 1999.

ADDRESSES: Address all comments concerning this proposed rule to: Joseph C. Poking, Secretary, Federal Maritime Commission, 800 North Capitol Street N.W., Room 1046, Washington, D.C. 20573-0001.

FOR FURTHER INFORMATION CONTACT: Thomas Panebianco, General Counsel, Federal Maritime Commission, 800

North Capitol Street N.W., Washington, D.C. 20573-0001, (202) 523-5740.

SUPPLEMENTARY INFORMATION: The Ocean Shipping Reform Act of 1998, Public Law 105-258, 112 Stat. 1902 ("OSRA"), amends the Shipping Act of 1984 ("1984 Act"), the Merchant Marine Act, 1920 ("1920 Act"), and the Foreign Shipping Practices Act of 1988 ("FSPA") in several areas. The Commission's rules at former 46 CFR parts 585, 586, 587, and 588 effectuate the statutory obligations mandated by the 1984 Act, the 1920 Act, and the FSPA. The Commission now proposes to update, redesignate, and clarify these rules to reflect the changes made by OSRA. In addition, the Commission proposes a new regulation, 46 CFR part 565, which would implement changed made by OSRA to section 9 of the 1984 Act and would gather previously scattered regulations affecting

controlled carriers into a more readily accessible codification.

Clarification and Amendment of Former 46 CFR Part 565

The proposed rule would amend the Commission's regulations covering the provisions of section 19 of the 1920 Act, to incorporate the changes made by OSRA. The entire part is redesignated as part 550.

Changes to redesignated §§ 550.102 and § 550.301 reflect OSRA's clarification that "pricing practices" are among the practices that could give rise to a condition unfavorable to shipping. The changes to the authority citation and to redesignated § 550.103(a) reflect the addition of OSRA as an amendment to the 1920 Act. The changes to redesignated §§ 550.103(b), 550.201, 550.202(b), and § 550.301(d) reflect OSRA's use of the new term "ocean transportation intermediary" in place of the old terms "ocean freight forwarder" and "non-vessel-operating common carrier".

The amendments instituted by OSRA include the addition of the suspension of service contracts to the list of available remedies in redesignated §§ 550.505(a), 550.601(c), and 550.602. The Commission's proposed rule reflects this change.

Redesignation of Former 46 CFR Part 586 and Removal of § 5416.3

The proposed rule would redesignate former 46 CFR part 586 as part 551, *Actions To Adjust or Meet Conditions Unfavorable to Shipping in the U.S. Foreign Trade, Former 46 CFR 586.3, Conditions unfavorable to shipping in the United States/Ecuador trade*, is no longer an ongoing proceeding and is therefore removed.

Clarification and Amendment of Former 46 CFR Part 587

The proposed rule would amend the Commission's regulations covering the 1984 Act's provisions providing relief for U.S.-flag vessels unduly impaired from accessing the ocean trade between foreign ports. See section 13(b)(5) of the 1984 Act, 46 U.S.C. app. § 1712(b)(5) (renumbered by OSRA as section 13(b)(6)). The entire part is redesignated as part 560.

Changes to redesignated §§ 560.1(a)(1) and (2) and 560.3(a) are changes to reflect renumbering of the Act. Section 560.2(c) refers to "fighting ships," a term which has been deleted from the definitions section of the Act and elsewhere. The removal of this term effects that deletion. The changes to redesignated § 560.7(b)(3)(i) reflect OSRA's addition of the suspension of

service contracts as a section 11a(e)(1)(B) remedy.

Clarification and Amendment of Former 46 CFR Part 588

The proposed rule would amend the Commission's regulations covering the FSPA's provisions authorizing Commission action to address adverse conditions affecting U.S.-flag carriers that do not exist for foreign carriers in the United States. The entire part is redesignated as part 555.

The change to redesignated § 555.1 makes reference to OSRA as an amendment to the FSPA. Changes to redesignated § 555.2 (a) and (d), and § 555.4 reflect OSRA's use of the new term "ocean transportation intermediary" in place of the old terms "ocean freight forwarder" and "non-vessel-operating common carrier". The change to redesignated § 555.2(c) corrects an error of word choice and corresponds to the language employed in the FSPA.

The change to redesignated § 555.4(c) improves the clarity of the provision. The changes to redesignated § 555.8 reflect OSRA's addition of the suspension of service contracts as a remedy.

New 46 CFR Part 565

The proposed new rule would implement OSRA's revision of section 9 of the 1984 Act, and would provide procedures for reviewing controlled carrier rates, charges, classifications, rules and regulations. The proposed rule improves the clarity of regulations governing controlled carriers, and gathers into a single part regulations which were previously scattered among the tariff and service contract regulations in former 46 CFR Part 514.

In addition to the 1984 Act's prohibitions against "maintaining" rates or charges below a level that is just and reasonable, OSRA adds the prohibition against "charging or assessing" such rates. Similarly, OSRA adds the prohibition on "enforcing" unjust or unreasonable rates, charges, classifications, rules or regulations in addition to "establishing and maintaining" them.

The change of tariff filing to tariff publication under OSRA is also reflected in section 9(a) of the 1984 Act as it applies to controlled carriers. Hence, in place of "filing," the Commission is authorized to prohibit the "publication or use" of any rates, charges, classifications, rules or regulations that a controlled carrier has failed to show are just and reasonable.

In a further reflection of the new tariff system, OSRA changes the authority of

the Commission from "disapproving" the "filing" to "prohibiting and suspending" the "publication and use" of unjust and unreasonable rates, charges, classifications, rules or regulations. Likewise, the Commission is directed by OSRA to take into account whether the rates or charges which have been "published or assessed" are below a compensatory level.

OSRA imposes a new time limit on the Commission's decision on whether or not a rate, charge, classification, rule or regulation is unjust or unreasonable. The Commission must decide such matters within 120 days of the receipt of information. This is reflected in proposed 46 CFR 565.8.

Finally, a significant change was made by OSRA to the regulation of controlled carriers in the exceptions found in section 9(f) of the 1984 Act. Three of the five exceptions were removed by OSRA; the provisions of section 9 now apply to all controlled carriers except those that are: (1) of a state whose vessels are entitled by a treaty of the United States to receive national treatment or Most Favored Nation treatment; or (2) in a trade served exclusively by controlled carriers. Proposed regulation § 565.5 reflects those changes. In addition to requiring ocean common carriers to inform the Commission of any changes to their control which might affect their controlled carrier classification, § 565.4 also requires newly commencing controlled common carrier operations to notify the Commission of the details of their ownership or control.

This document also outlines the proposed restructuring of subchapter C of chapter IV, 46 CFR, by revising the subchapter heading and adding redesignated parts 550, 555, and 560 and new part 565 to subchapter C. Current provisions of part 514 which are proposed here to be incorporated into new part 565 will be removed from part 514 in a subsequent document.

In accordance with 44 U.S.C. 3518(c)(1)(B), and except for investigations undertaken with reference to a category of individuals or entities (e.g., an entire industry), any information requests or requirements in 46 CFR parts 585, 586, 587 and 588 are not subject to the requirements of section 3507 of the Paperwork Reduction Act because such collections of information are pursuant to a civil, administrative action or investigation by an agency of the United States against specific individuals or entities.

The reporting requirements contained in 46 CFR Part 565 have been submitted to the Office of Management and Budget (OMB). The Commission estimate that

the public burden for this collection of information is estimated to be 70 annual personhours for all of the estimated 10 annual respondents. This estimate includes, as applicable, the time needed to review instructions, develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information, search existing data sources, gathering and maintain the data needed, and complete and review the collection of information; and transmit or otherwise disclose the information.

Send comments regarding the burden estimate to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Maritime Commission, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503 within 30 days of publication in the Federal Register.

The FMC would also like to solicit comments to: (a) evaluate the accuracy of the Commission's burden estimates for the proposed collection of information; (b) enhance the quality, utility, and clarity of the information to be collected; end (c) minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this proposed rulemaking will be summarized and/or included in the final rule and will become a matter of public record. The OMB control number will be displayed in the final rule.

The Chairman certifies, pursuant to section 605 of the Regulatory Flexibility Act, 5 U.S.C. 665, that the proposed amendments will not, if promulgated, have a significant impact on a substantial number of small entities. The proposed changes affect vessel-operating common carriers, entities that are not considered to be small.

List of Subjects

46 CFR Parts 585 and 550

Administrative practice and procedure, Maritime carriers.

46 CFR Parts 588 and 551

Japan, Maritime carriers.

46 CFR Parts 587 and 560

Administrative practice and procedure, Maritime carriers.

48 CFR Parts 588 and 555

Administrative practice and procedure, Investigations, Maritime carriers.

46 CFR Part 585

Administrative practice and procedure, Maritime carriers, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Commission proposes to amend 46 CFR parts 585, 586, 587, and 588, and to add new part 565, as set forth below:

1. Revise the title of subchapter C to read:

SUBCHAPTER C-REGULATIONS AND ACTIONS TO ADDRESS RESTRICTIVE FOREIGN MARITIME PRACTICES

PART 585—REGULATIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE FOREIGN TRADE OF THE UNITED STATES

PART 585—[REDESIGNATED AS PART 550]

1. Redesignate part 585 as part 550, and transfer newly designated part 550 to subchapter C.

2. The authority citation for redesignated part 550 is revised to read as set forth below:

Authority: 5 U.S.C. 553; sec. 19 (a)(2), (e), (f), (g), (h), (i), (j), (k) and (l) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876 (a)(2), (e), (f), (g), (h), (i), (j), (k) and (l), as amended by Pub. L. No. 105-258; Reorganization Plan No. 7 of 1961, 75 Stat. 840; and sec. 10002 of the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a.

2a. Add a note to newly designated part 550 to read as follows:

Note to part 550: In accordance with 44 U.S.C. 3518(c)(1)(B), and except for investigations undertaken with reference to a category of individuals or entities (e.g., an entire industry), any information requests or requirements in 46 CFR part 550 are not subject to the requirements of section 3507 of the Paperwork Reduction Act because such collections of information are pursuant to a civil, administrative action or investigation by an agency of the United States against specific individuals or entities.

3. Revise redesignated § 550.102 to read as set forth below:

§ 550.102 scope.

Regulatory actions may be taken when the Commission finds, on its own motion or upon petition, that a foreign government has promulgated and enforced or intends to enforce laws, decrees, regulations or the like, or has engaged in or intends to engage in practices which presently have or

prospectively could create conditions unfavorable to shipping in the foreign trade of the United States, or when owners, operators, agents or masters of foreign vessels engage in or intend to engage in competitive methods, pricing practices or other practices which have created or could create such conditions.

4. Revise redesignated § 550.103 (a) and (b) to read as set forth below:

§ 550.103 -Definitions.

(a) *Act* means the Merchant Marine Act, 1920, as amended by Pub. L. No. 101-595 and as amended by Pub. L. No. 105-258.

(b) *Person* means individuals, corporations, partnerships and associations existing under or authorized by the laws of the United States or of a foreign country, and includes any common carrier, tramp operator, bulk operator, shipper, shippers' association, importer, exporter, consignee, ocean transportation intermediary, marine terminal operator, or any component of the Government of the United States.

5. Revise redesignated § 550.201(a) to read as set forth below:

§ 550.201 Information orders.

(a) The Commission may, by order, require any person (including any common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean transportation intermediary, or marine terminal operator, or any officer, receiver, trustee, lessee, agent, or employee thereof), to file with the Commission a report, answers to questions, documentary material, or other information which the Commission considers necessary or appropriate;

6. Revise redesignated § 550.202(b) introductory text and (b)(3) to read as set forth below:

§ 550.202 Type of information.

(b) Shipper, shippers' association, or ocean transportation intermediary in the affected trade to furnish any or all of the following information:

(3) Amount of brokerage, ocean transportation intermediary compensation or other charges collected or paid in connection with shipment in the affected trade; and

7. Revise the introductory text and paragraph (d) of redesignated § 550.381 to read as set forth below:

§ 550.301 Findings.

For the purposes of this part, conditions created by foreign governmental action or competitive methods, pricing practices or other practices of owners, operators, agents or masters of foreign vessels are found unfavorable to shipping in the foreign trade of the United States, if such conditions:

- (d) Restrict or burden a carrier's intermodal movement or shore-based maritime activities, including terminal operations and cargo collection; agency services; inland transportation intermediary services and operations; or other activities and services integral to transportation system.

8. Revise redesignated § 550.601(c) to read as set forth below:

§ 550.601 Actions to be taken if favorable conditions.

(c) Suspension of a common carrier, tariffs and service contracts for carriage to or from United States ports, including a common carrier's participation in tariffs of conferences and service contracts of agreements in United States trades of which it is a member for any period the Commission specifies.

9. Revise redesignated § 550.602 to read as set forth below:

§ 550.602 Penalty.

A common carrier that accepts or handles cargo for carriage under a tariff or service contract that has been suspended under § 550.601 of this part, or that knowingly uses another tariff or service contract that has been suspended under these sections, is subject to a civil penalty of not more than \$50,000 for each violation. It is found to be an offense if the carrier is found to be operating under a tariff or service contract that has been suspended under these sections.

PART 551—ACTIONS TO ADDRESS ADVERSE CONDITIONS AFFECTING U.S. FLAG CARRIERS IN OCEAN TRADE BETWEEN FOREIGN PORTS

1. Redesignate part 551 as part 551 and transfer newly designated part 551 to subchapter C.

PART 551—[REDESIGNATED AS PART 551]

2. The authority citation for redesignated part 551 is revised to read as set forth below:

Authority: 5 U.S.C. 553; sec. 13(b)(6), 46 U.S.C. app. 1712(b)(6), 1714, and 1716, as amended by Pub. L. No. 105-258, sec. 10002 of the Foreign Shipping Practices Act of 1998 (46 U.S.C. app. 1710a), as amended by Pub. L. No. 105-258.

2a. Add a note to newly designated part 551 to read as follows:

Note to part 551: In accordance with 44 U.S.C. 3518(c)(1)(B), and except for investigations undertaken with reference to a category of individuals or entities (e.g., an entire industry), any information requests or requirements in 46 CFR part 551 are not subject to the requirements of section 3507 of the Paperwork Reduction Act because such collections of information are pursuant to a civil, administrative action or investigation by an agency of the United States against specific individuals or entities.

3. Redesignated § 551.3 is removed.

PART 587—ACTIONS TO ADDRESS CONDITIONS UNDULY IMPAIRING ACCESS OF U.S.-FLAG VESSELS TO OCEAN TRADE BETWEEN FOREIGN PORTS**PART 587—[REDESIGNATED AS PART 580]**

1. Redesignate part 587 as part 580, and transfer newly designated part 580 to subchapter C.

2. The authority citation for redesignated part 580 is revised to read as set forth below:

Authority: 5 U.S.C. 553; secs. 13(b)(6), 15 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1712(b)(6), 1714, and 1716, as amended by Pub. L. No. 105-258, sec. 10002 of the Foreign Shipping Practices Act of 1998 (46 U.S.C. app. 1710a), as amended by Pub. L. No. 105-258.

3. Revise redesignated § 580.1(a) to read as set forth below:

§ 580.1 Purpose; general provisions.

(a)(1) It is the purpose of this part to enumerate certain conditions resulting from the action of a common carrier, acting alone or in concert with any person, or a foreign government, which unduly impair the access of a vessel documented under the laws of the United States whether liner, bulk, tramp or other vessel, (hereinafter "U.S. flag vessel") to ocean trade between foreign ports, which includes intermodal movements, and to establish procedures by which the owner or operator of a U.S. flag vessel (hereinafter "U.S. flag carrier") may petition the Federal Maritime Commission for relief under the authority of section 13(b)(6) of the Shipping Act of 1984 ("the Act") (46 U.S.C. app. 1712(b)(6)).

(2) It is the further purpose of this part to indicate the general circumstances under which the authority granted to the Commission under section 13(b)(6) may be invoked, and the nature of the subsequent actions contemplated by the Commission.

(3) This part also furthers the goals of the Act with respect to encouraging the

development of an economically sound and efficient U.S. flag liner fleet as stated in section 2 of the Act (46 U.S.C. app. 1701).

* * * * *

4. Revise redesignated § 560.2(c) to read as set forth below:

§ 560.2 Factors indicating condition unduly impairing access.

* * * * *

(c) Use of predatory practices, possibly including but not limited to below market pricing designed to exclude competition, and use of conferences employing deferred rebates, which unduly impair access of a U.S. flag vessel to the trade.

* * * * *

5. Revise the first sentence of the introductory text of redesignated § 560.5(a) to read as set forth below:

§ 560.5 Receipt of relevant information.

(a) In making its decision on matters arising under section 13(b)(6) of the Act, the Commission may receive and consider relevant information from any owner, operator, or confessor of an affected trade, or from any foreign government, either directly or through the Department of State or from any other reliable source. * * *

* * * * *

6. Revise redesignated § 560.7(a)(1) to read as set forth below:

§ 560.7 Decision; sanctions; remedies.

* * * * *

(b) * * *

(3)(i) Suspension, in whole or in part, of any or all tariffs or service contracts for carriage to or from United States ports for any period the Commission specifies, or until such time as unduly impaired access is removed from U.S. flag carriers in the affected trade.

* * * * *

PART 583—ACTIONS TO ADDRESS ADVERSE CONDITIONS AFFECTING U.S. FLAG CARRIERS IN OCEAN TRADE BETWEEN FOREIGN PORTS AND THE UNITED STATES**PART 583—[REDESIGNATED AS PART 555]**

1. Redesignate part 583 as part 555 and transfer newly designated part 555 to subchapter C.

2. The authority citation for redesignated part 555 is revised to read as set forth below:

Authority: 5 U.S.C. 553; sec. 13(b)(6), 46 U.S.C. app. 1712(b)(6), 1714, and 1716, as amended by Pub. L. No. 105-258.

2a. Add a note to newly designated part 555 to read as follows:

Note to part 555: In accordance with 44 U.S.C. 3518(c)(1)(B), and except for investigations undertaken with reference to a category of individuals or entities (e.g., an entire industry), any information requests or requirements in 46 CFR part 555 are not subject to the requirements of section 3507 of the Paperwork Reduction Act because such collections of information are pursuant to a civil, administrative action or investigation by an agency of the United States against specific individuals or entities.

3. Revise redesignated § 555.1 to read as set forth below:

555.1 Purpose.

It is the purpose of the regulations of this part to establish procedures to implement the Foreign Shipping Practices Act of 1988, as amended by the Ocean Shipping Reform Act of 1998, which authorizes the Commission to take action against foreign carriers, whose practices or whose government's practices result in adverse conditions affecting the operations of United States carriers, which adverse conditions do not exist for those foreign carriers in the United States. The regulations of this part provide procedures for investigating such practices and for obtaining information relevant to the investigations, and also afford notice of the types of actions included among those that the Commission is authorized to take.

4. Revise redesignated § 555.2(a), (c), and (d) to read as set forth below:

§ 555.2 Definitions.

(a) *Common carrier, marine terminal operator, ocean transportation intermediary, ocean common carrier, person, shipper, shippers association, and United States* have the meanings given each such term, respectively, in section 3 of the Shipping Act of 1984 (46 U.S.C. app. 1702);

(c) *Maritime services* means port-to-port carriage of cargo by the vessels operated by ocean common carriers;

(d) *Maritime-related services* means intermodal operations, terminal operations, cargo solicitation, agency services, ocean transportation intermediary services and operations, and all other activities and services integral to total transportation systems of ocean common carriers and their foreign domiciled affiliates on their own and others' behalf;

5. Revise redesignated § 555.4 (a) and (c) to read as set forth below:

§ 555.4 Petitions.

(a) A petition for investigation to determine the existence of adverse conditions as described in § 555.3 may be submitted by any person, including any common carrier, shipper, shippers' association, ocean transportation intermediary, or marine terminal operator, or any branch, department, agency, or other component of the Government of the United States. Petitions for relief under this part shall be in writing, and filed in the form of an original and fifteen copies with the Secretary, Federal Maritime Commission, Washington, DC 20573.

(c) A petition which the Commission determines fails to comply substantially with the requirements of paragraph (b) of this section shall be rejected promptly and the person filing the petition shall be notified of the reasons for such rejection. Rejection is without prejudice to the filing of an amended petition.

6. Revise redesignated § 555.8(a)(2) to read as set forth below:

§ 555.8 Action against foreign carriers.

(2) Suspension, in whole or in part, of any or all tariffs or service contracts, including the right of an ocean common carrier to use any or all tariffs or service contracts of conferences in United States trades of which it is a member for such period as the Commission specifies;

PART 565—[ADDED]

1. Add part 565 to subchapter C to read as set forth below:

PART 565—CONTROLLED CARRIERS

Sec.

565.1 Purpose and scope.

565.2 Definitions.

565.3 Classification as controlled carrier.

565.4 Notification to Commission of change in control.

565.5 Exceptions.

565.6 Level of rates and charges generally.

565.7 Effective dates.

565.8 Special permission.

565.9 Commission review, suspension and prohibition of rates, charges, classifications, rules or regulations.

565.10 Suspension procedures, period and replacement rates.

565.11 Presidential review.

565.12 Stay, postponement, discontinuance or suspension of action.

Authority: 46 U.S.C. App. 1708, as amended by Pub. L. No 105-258.

§ 565.1 Purpose and scope.

(a) *Purpose.* The regulations of this part are intended to carry out the

Commission's mandate under section 9 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998, to monitor the practices of controlled carriers and ensure that they do not:

(1) Maintain rates or charges in their tariffs and service contracts that are below a level that is just and reasonable nor

(2) Establish, maintain or enforce unjust or unreasonable classifications, rules or regulations in those tariffs or service contracts which result or are likely to result in the carriage or handling of cargo at rates or charges that are below a just and reasonable level.

(b) *Scope.* The regulations contained in this part set forth the special procedures whereby controlled carriers' tariffs and service contracts become effective and are reviewed by the Commission. These regulations in no way exempt controlled carriers from other Commission regulations or statutory authority to which they may otherwise be subject as ocean common carriers. These regulations apply to all controlled carriers operating in the foreign commerce of the United States unless excepted under section 9(f) of the Shipping Act of 1984, as reflected by § 565.5.

§ 565.2 Definitions.

(a) *Controlled carrier* means an ocean common carrier that is, or whose operating assets are, directly or indirectly owned or controlled by a government. Ownership or control by a government shall be deemed to exist with respect to any ocean common carrier if:

(1) A majority portion of the interest in the carrier is owned or controlled in any manner by that government, by any agency thereof, or by any public or private person controlled by that government; or

(2) That government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer or the chief executive officer of the carrier.

(b) *Effective date* has the same meaning it has in 46 CFR part 520.

§ 565.3 Classification as controlled carrier.

(a) *Notification.* The Commission will periodically review the ocean common carriers operating in the foreign commerce of the United States and will notify any ocean common carrier of any change in its classification as a controlled carrier.

(b) *Rebuttal of classification.* (1) Any ocean common carrier contesting such a classification may, within 30 days after

the date of the Commission's notice submit a rebuttal statement.

(2) The Commission shall review the rebuttal and notify the ocean common carrier of its final decision.

§ 565.4 Notification to Commission of change in control.

Whenever the operation, control or ownership of an ocean common carrier is transferred resulting in a majority portion of the interest of the ocean common carrier being owned or controlled in any manner by a government, the ocean common carrier shall immediately send written notification of the details of the change to the Secretary of the Commission. If a carrier is newly connected to an ocean common carrier operation in affiliated States trade, and if a majority portion of the carrier is owned or controlled by a government, or if a government may approve or disapprove the majority of directors or the chief executive or operating officer of the carrier, the carrier shall immediately send written notification to the Secretary of the details of such ownership or control.

§ 565.5 Exceptions.

All controlled carriers shall be subject to provisions of this part and section 9 of the Shipping Act of 1984 except those which meet the following exceptions:

(a) When the vessels of the controlling state are entitled by a treaty of the United States to receive treatment most-favored-nation treatment.

(b) When the controlled carrier operates in a trade served exclusively by controlled carriers.

§ 565.6 Level of rates and charges generally.

No controlled carrier may maintain or enforce rates or charges in bills of lading or service contracts that are at a level that is just and reasonable to the controlled carrier may not maintain unjust or unreasonable rates, classifications, rules or regulations in its tariffs or service contracts. An unjust or unreasonable rate, charge, classification, rule or regulation means one that is likely to result in the handling of cargo at rates or charges that are below a just and reasonable level. See § 565.9(a)(2) (Rate standards).

§ 565.7 Effectiveness.

(a) *Generally.* Except for bills of lading contracts, the rates, charges, classifications, rules or regulations of controlled carriers shall be subject to the Commission's review and, without special permission, become effective no later than the 30th day after the date of publication.

(b) Open rates. (1) Generally.

Controlled carriers that are members of conference agreements publishing rates for commodities designated as open by the conference are subject to the 30-day controlled carrier notice requirement, except when special permission is granted by the Commission under § 565.8.

(2) *Conference publication of reduced open rates.* Notwithstanding paragraph (b)(1) of this section, a conference may, on less than 30 days' notice, publish reduced rates on behalf of controlled carrier members for open-rated commodities:

(i) At or above the minimum level set by the conference; or

(ii) At or above the level set by a member of the conference that has not been determined by the Commission to be a controlled carrier subject to section 9 of the Shipping Act of 1984.

(c) *Independent action rates of controlled carriers.* Conferences may publish on behalf of their controlled carrier members lower independent action rates on less than 30 days' notice, subject to the requirements of their basic agreements and subject to such rates being published at or above the level set by a member of the conference that has not been determined by the Commission to be a controlled carrier subject to section 9 of the Shipping Act of 1984.

§ 565.8 Special permission.

Section 8(d) of the Shipping Act of 1984 authorizes the Commission, in its discretion and for good cause shown, to permit increases or decreases in rates, or the issuance of new or initial rates, on less than statutory notice under § 565.7. Section 9(c) of the Shipping Act of 1984 authorizes the Commission to permit a controlled carrier's rates, charges, classifications, rules or regulations to become effective on less than 30 days' notice. The Commission may also in its discretion and for good cause shown, permit departures from the requirements of this part. The Commission will consider such requests for special permission by controlled carriers pursuant to its procedures set forth at 46 CFR part 520.

§ 565.9 Commission review, suspension and prohibition of rates, charges, classifications, rules or regulations.

(a)(1) *Request for justification.* Within 20 days of a request (with respect to its existing or proposed rates, charges, classifications, rules or regulations) from the Commission, each controlled carrier shall file a statement of justification that sufficiently details the controlled carrier's need and purpose for such rates, charges, classifications,

rules or regulations upon which the Commission may reasonably base its determination of the lawfulness thereof.

(2) *Rate standards.* (i) In determining whether rates, charges, classifications, rules or regulations by a controlled carrier are just and reasonable, the Commission shall take into account whether the rates or charges which have been published or assessed or which would result from the pertinent rates, charges, classifications, rules or regulations are below a level which is fully compensatory to the controlled carrier based upon that carrier's actual or constructive costs.

(ii) For the purposes of § 565.9(a)(2), "constructive costs" means the cost of another carrier, other than a controlled carrier, operating similar vessels and equipment in the same or a similar trade.

(iii) The Commission may also take into account other appropriate factors, including, but not limited to, whether:

(A) The rates, charges, classifications, rules or regulations are the same as or similar to those published or assessed by other carriers in the same trade;

(B) The rates, charges, classifications, rules or regulations are required to assure movement of particular cargo in the trade; or

(C) The rates, charges, classifications, rules or regulations are required to maintain acceptable continuity, to the quality of common carrier service to or from affected ports.

(3) *Time for determination.* The Commission shall determine, within 30 days of the receipt of information requested by the Commission under this section, whether the rates, charges, classifications, rules or regulations of a controlled carrier may be unjust and unreasonable. Whenever the Commission is of the opinion that the rates, charges, classifications, rules or regulations published or assessed by a controlled carrier may be unjust and unreasonable, the Commission shall issue an order to the controlled carrier to show cause why those rates, charges, classifications, rules or regulations should not be prohibited.

(b) *Suspension.* Pending a decision as to whether to prohibit the rates, charges, classifications, rules or regulations of a controlled carrier, the Commission may suspend the rates, charges, classifications, rules or regulations under § 565.10.

(c) *Prohibition.* The Commission shall prohibit the use of any rates, charges, classifications, rules or regulations if the controlled carrier has failed to demonstrate to be just and reasonable in a proceeding under this part. The burden of proof is on the controlled

carrier to demonstrate that its rates, charges, classifications, rules or regulations are just and reasonable. The use of rates, charges, classifications, rules or regulations published or assessed by a controlled carrier that have been suspended or prohibited by the Commission is unlawful.

(d) *Publication.* All final orders of prohibition shall be published in the Federal Register.

§ 565.10 Suspension procedures, period of replacement rates.

(a) (1) *Suspension prior to effective date.* Pending a determination as to their lawfulness in a prohibition proceeding as described in § 665.9, the Commission may suspend the rates; charges, classification rules or regulations at any time before their effective date.

(2) *Suspension after effective date.* In the case of rates, charges, classifications, rules or regulations that have already become effective, the Commission may, upon the issuance of an order to show cause, suspend those rates, charges, classifications, rules or regulations on not less than 30 days' notice to the controlled carrier.

(b) *Period of suspension.* In any case, no period of suspension may be greater than 160 days.

(c) *Implementation.* (1) Upon issuance of an order suspending a rate, charge, classification, rule or regulation in whole or in part, the Commission shall direct the controlled carrier to remove the suspended material from its tariff publication: or

(2) If the matter subject to the suspension order is not covered by paragraph (c)(1) of this section, the commission shall set forth procedures in the order for implementing the suspension.

(3) *Publication.* All orders of suspension shall be published in the Federal Register.

(d) *Replacement rates.* Controlled carriers may publish in tariffs or file in service contracts rates, charges, classifications, rules or regulations in lieu of the suspended matter ("replacement rates").

(1) *Effective date.* In the case of replacement rates which are published in tariffs and which are scheduled to become effective during a suspension period, may become effective immediately upon either their publication in tariffs or upon the effective date of the suspension, whichever is later.

(2) *Rejection of replacement rates.* The Commission may reject the replacement rates, charges, classifications, rules or regulations

published in tariffs or filed in service contracts to take effect during the suspension period if they are unjust and unreasonable. In determining whether to reject replacement rates, charges, classifications, rules or regulations, the Commission will consider whether they would result in total charges (i.e., rate plus applicable surcharges) that are lower than the lowest comparable charges effective for a common carrier, other than a controlled carrier, serving the same trade.

(3) At the same time it announces replacement rates, the controlled carrier shall submit to the Secretary of the Commission, a letter identifying the specific competing common carrier's rates, charges, classification or rules resulting in total charges which are equal to or lower than its own.

§ 666.11 Presidential review.

The Commission shall transmit all orders of suspension or final orders of prohibition to the President of the United States concurrently with the submission of such orders to the Federal Register pursuant to § 565.9(d) or § 565.10(c)(3). The President may, within 10 days of either the receipt or effective date of the order, request in writing that the Commission stay the effect of the order for reasons of national defense or foreign policy.

§ 666.12 Stay, postponement, discontinuance or suspension of action.

The Commission may, on its own motion or upon petition, postpone, discontinue, or suspend any and all actions taken by it under the provisions of this part. The Commission shall immediately stay the effect of any order issued under this part as requested by the President pursuant to § 565.11.

By the Commission.

Joseph C. Poking.

Secretary.

[FR Doc. 98-32224 Filed 12-3-98; 8:45 am]

BILLING CODE 6736-61-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98-196, RM-9325]

Radio Broadcasting Services;
Whitewright, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Chinquapin Creek Broadcasting

Company, proposing the allotment of Channel 260A to Whitewright, Texas. The channel can be allotted to Whitewright without a site restriction at coordinates 33-30-48 and 96-23-42.

DATES: Comments must be filed on or before January 11, 1999, and reply comments on or before January 26, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Henry E. Crawford, Law Offices of Henry E. Crawford, 1150 Connecticut Avenue, N.W., Suite 900, Washington, D.C. 200364192.

FOR FURTHER INFORMATION CONTACT:

Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 98-196, adopted November 9, 1998, and released November 20, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, N.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, DC 20036, (202) 857-3800, facsimile (202) 857-3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98-32302 Filed 12-3-98; 8:45 am]

BILLING CODE 6712-01-M